you that Messrs. Big Valley Development (M) Sdn. Bhd. owes us the above mentioned sum.

We wish to inform you now that the facts mentioned in the said letter was a mistake and was caused by accounting errors made by our Accounting Department.

We apologise for the errors and the inconvenience caused.

Thank you.

Yours faithfully,
Big Valley Development (M) Sdn. Bhd.
SYED MOHD. SYED ABDUL RAHMAN.
CHAIRMAN.

cc. Y.H. Tan & Co.
Advocates & Solicitors.

cc. Choong Yik Son, Mohd. Ali & Partners,
Advocates & Solicitors."

What was stated in the affidavit of the managing director of the garnishee company and in the second letter was confirmed by the judgment debtor. In his affidavit affirmed on May 29, 1985, the chairman of the judgment debtor company averred that the garnishee company was not indebted to the judgment debtor at all. In his affidavit he said,

"4. The truth of the matter is that the said Garnishee Company Big Valley Development (M) Sdn. Bhd. is not indebted to the Judgment Debtor Company Inter Sistem Development (M) Sdn. Bhd. for any sum at all.

5. There has never been any transactions between the Garnishee Company and the Judgment Debtor Company and therefore there is no question of any debt arising."

In a further affidavit affirmed on June 15, 1985, Mr. Cheong Cheng Onn reiterated that the garnishee company was justly and truly indebted to the judgment debtor by reason of the first letter. He added that sometime in early May, 1985, he was approached by a director of the garnishee company, who gave him a cheque for a sum of $14,821.89 being part payment towards the amount due and owing to the judgment creditor on behalf of the judgment debtor. According to him the cheque was dishonoured when presented to the bank.

The managing director of the garnishee company, in his further affidavit dated September 11, 1985, denied owing the judgment debtor any money. With regard to the cheque, he said, it was paid to the judgment creditor in respect of "amount purportedly owed by the garnishee company to the plaintiff and had nothing to do with the defendant company. . . " He added that his company had "trading transactions" with the judgment creditor company. According to him, there was a dispute between his company and the judgment creditor and because of that, payment on the cheque was stopped.

In view of the conflicting evidence contained in the affidavits, it is not clear whether there is any debt due to the judgment debtor. I agree with Mr. Prassad Abraham, Counsel for the garnishee, that the matter should go for trial. Order 49 rule 5 clearly states:

"Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order in Form 101 that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may tried, without, if it orders trial before the Registrar, the need for any consent by the parties."

In my judgment, this is an appropriate matter to be tried. I, therefore, set aside the order of the Registrar and order that the matter be set for trial under Order 49 rule 5. Costs in the cause.

Order accordingly.

Solicitors: *Y.H. Tan & Co; K.Y. Leong & Partners.*

DR. NG TENG KOK & ORS. v. CHEAH SEE KIAN & ORS.

[O.C.J. (Mohamed Dzaiddin J.) July 14 & October 8, 1986]

[Penang – Suit No. 22-58-1983]

Landlord and Tenant – Jurisdiction – Whether Sessions Court has jurisdiction to entertain claim for rent of $360 p.m. – Scope of Subordinate Courts Act, 1948, s. 70(3).

Jurisdiction – Sessions Court – Whether Sessions Court has jurisdiction to entertain claim for rent of $360 p.m.

In the present case, the plaintiffs claimed vacant possession of certain premises and for mesne profits against the first, second and third defendants. They also claimed damages against the fourth defendant for trespass. The issue before the court was whether the Sessions Court had jurisdiction to entertain the plaintiffs' claim under sub-section (3) of section 70 of the Subordinate Courts Act, 1948.

Held: (1) the sum which the plaintiffs were claiming as mesne profits and damages cannot be added or computed together under subsection (3) of section 70 because this sub-section relates to the jurisdiction in terms of the amount of rent payable in respect of the premises as determined under an agreement oral or written;

(2) in the present case, under subsection (3) the Sessions Court does have jurisdiction to try the case because the rent payable was $4,320.00 per annum or $360.00 per month. Therefore, an order would be made to have this case transferred to the Sessions Court for hearing within six months from date of Judgment.

CIVIL SUIT.

Lim Kean Chye for the plaintiffs.
Khaw Ewe Seng for the defendants.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: In this suit, the plaintiffs are claiming for vacant possession of the 1st floor of Lot 801 and Lot 803 T.S. N.E.D. bearing No. 259 Penang Road, Penang and for mesne profits against the 1st, 2nd and 3rd defendants from July 1, 1978 to October 19, 1979 and against the 3rd defendant from October 19, 1979 till date of realisation with interest. In addition, they are claiming damages for trespass against the 4th defendant. The plaintiffs rely on several breaches of the covenants on the part of the defendants in a tenancy agreement entered into between them and the 1st and 2nd defendants on October 1, 1975. According to this agreement, the tenancy was for a term of 3 years commencing from July 1, 1975 at a monthly rental of $360.00.

At the outset of the hearing of this suit on September 23 1986, Mr. Khaw, on behalf of the defendants raised preliminary objections one of which concerned the jurisdiction. He stated that the present case should have been commenced at the first instance in the Sessions Court by virtue of section 70(3) of the Subordinate Courts Act, 1948 which reads as follows:–

"The aforesaid jurisdiction shall not be exercised when the money claimed exceeds the sum of twenty-four thousand dollars, or where the rent payable in respect of the premises exceeds the sum of twenty-four thousand dollars per annum or two thousand dollars per mensem."

Mr. Lim Kean Chye, for the plaintiffs submitted that in determining the amount of the rent, the court should consider the mesne profit and damages arising from the defendants' holding over the tenancy of the premises in question. In such an event, he said the amount payable including damages would exceed $300,000.00 or so.

Section 69(a) of the Subordinate Courts Act says that the Sessions Court shall have no jurisdiction in actions, suits or proceedings of a civil nature relating to immovable property except as provided in sections 70 and 71. Section 70 gives the Sessions Court jurisdiction to hear and determine any action for the recovery of immovable property subject to sub-sections (3) and (4). And, as I have mentioned earlier, sub-section (3) gives jurisdiction to the Sessions Court to hear and determine any action in the recovery of immovable property when the money claimed does not exceed the sum of $24,000.00 or where the rent payable does not exceed the same amount per annum or $2,000.00 per month. Therefore under the sub-section, it is clear in the present case that the Sessions Court does have jurisdiction to try the case because the rent payable was $4,320.00 per annum or $360.00 per month.

Sub-section (2) of section 70 provides that in any such action there may be added a claim for rent or mesne profit and for damages arising to the plaintiff from the defendant holding from or resisting his right of possession and for damages for breach of any covenant, condition or agreement relating to the premises. However, I am of the opinion that the sum in which the plaintiff is claiming as mesne profit and damages cannot be added or computed together under sub-section 3 because this sub-section relates to the jurisdiction in terms of the amount of rent payable in respect of the premises as determined under an agreement oral or written. Whereas what is contemplated in sub-section (2) is that the plaintiff may add a claim for rent or mesne profit and for damages in addition to his claim for recovery of the immovable property.

Therefore, for the above reasons, I make an order that this case be transferred to the Sessions Court for hearing, which should be heard within six months from today. Accordingly, I also order that the present pleadings be used in the Sessions Court. I make no order as to costs.

Order accordingly.

Solicitors: *Lim Kean Chye & Co.; Khaw Ewe Seng & Co.*